Supreme Court, U.S.
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(2)

No.: 94-165

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA
OCTOBER TERM, 1993

VATHSALA SRINIVASAN,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
LOS ANGELES COUNTY, SOUTHEAST DISTRICT (NORWALK),

Respondent.

RIO HONDO COMMUNITY COLLEGE DISTRICT,
Real Party In Interest.

**BRIEF IN OPPOSITION OF REAL PARTY IN INTEREST TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT**

**OPPOSITION OF REAL PARTY IN INTEREST**

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**QUESTIONS PRESENTED:**

Rio Hondo Community College District (hereinafter "Rio Hondo"), real party in interest in this action, asserts that, no reviewable question has been presented by the Petitioner. Rio Hondo responds to the Petitioner's specific allegations as follows:

1. Petitioner claims that the provisions of 9 U.S.C.S. § 10(a-d), F.R.C.P., Rule 60(b) and various Supreme Court (hereinafter "Superior Court") rulings apply to vacate the California Superior Court order of October 13, 1993, denying Petitioner's Motion to Vacate the Arbitration Award and Motion to Tax Costs against defendant. Petitioner does not explain how Federal Rules of Procedure governing relief from judgments or orders in federal district courts is applicable

to her Motion, brought in Superior Court. Moreover, Petitioner does not refer to any California statute that is repugnant to the Constitution, treaties, or laws of the United States. Finally, pursuant to California Code of Civil Procedure, § 1141.20 and California Rules of Court, § 1616, an arbitration award is nullified by any party's request for a trial de novo. Petitioner, did, in fact, file a request for trial de novo, thus the arbitration award entered in favor of Rio Hondo, has been vacated and accordingly, the issue is moot.

2. Petitioner suggests that the provisions of Amendment IV, Section 1 and Amendment XIV, Section I of the United States Constitution and various Supreme Court holdings somehow apply to the issues presented herein. It is

impossible, based on a careful review of the Petitioner's Petition for Writ of Certiorari to comprehend how the Fourth Amendment to the Constitution, made applicable to the state of California by the Fourteenth Amendment, somehow applies to a California Superior Court ruling denying Petitioner's Motion to Quash Deposition Subpoenas. Petitioner entirely misapprehends the application of this Constitutional Amendment protecting citizens from unreasonable search and seizure.

3. The Petitioner's claim that the Fourteenth Amendment to the United States Constitution applies to the Superior Court's granting of Rio Hondo's Motion to Quash deposition subpoenas and the Superior Court's order denying Rio Hondo's Motion for Order Terminating

Sanctions is utterly incomprehensible and no reasoned response is possible.

4. Even more confusing is the Petitioner's contention that 18 U.S.C.S. § 401 and 28 U.S.C.S. § 459, Federal statutes governing the authority of the United States District Courts to punish by fine or imprisonment, contempt of its authority and a federal statute granting each justice or judge of the United States the authority to administer oaths and affirmations and to take acknowledgements, together with a number of this Court's rulings, somehow apply to the Superior Court's denial of Petitioner's Motion to Compel Documents, for Contempt and Sanctions. In any event, inasmuch as the Superior Court denied Petitioner's Motion for Contempt, no reviewable judgement or order was ever

entered.

5. The Petitioner claims that the provisions of the Fourth and Fourteenth amendment of the United States Constitution and a number of this court's rulings apply to the Superior Court's order staying Rio Hondo's Motion for Terminating Sanctions. Once again, Petitioner does not and cannot explain how the provisions of these Constitutional Amendments apply to the Superior Court's order.

6. The Petitioner claims that she may be entitled to costs. However, Rule 43 of the Supreme Court of the United States allows costs only when "a judgment or decree is affirmed, reversed, or vacated by this court." Rules of the Supreme Court, Rule 43(2). The Petition does not seek reversal, vacation, or

affirmation of a judgment or decree, only that her Petition for Writ of Certiorari be granted. Accordingly, the issue of costs is not properly presented at this time.

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# BRIEF IN OPPOSITION OF REAL PARTY IN INTEREST TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

## OPPOSITION OF REAL PARTY IN INTEREST

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Real Party in Interest, Rio Hondo Community College District, ("Rio Hondo") respectfully submits its opposition to Petitioner, Vathsala Srinivasan's Petition for Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District.

**JURISDICTION:**

As set forth more fully below, this Court lacks jurisdiction over this matter and must deny the instant Petition because:

(1) The Petitioner has not presented any federal question pursuant to 28 U.S.C.A. § 1257(a) either in her Petition before this court, her Petition for Review before the Supreme Court of California, her Petition for Writ of Mandate before the Court of Appeal for the Second Appellate District, or before

the Superior Court of the State of California;

(2) The California state court rulings that are the subject of the instant Petition do not constitute final judgments or decrees as required by 28 U.C.C.A. § 1257(a);

(3) The Petitioner failed to timely raise the issues set forth in her petition before the Court of Appeal of the State of California; and

(4) No case or controversy pursuant to Article III of the United States Constitution exists with respect to the Superior Court's denial of the Petitioner's Motion to Vacate the arbitration award.

**STATEMENT OF THE CASE:**

The underlying action was brought by the Petitioner against her former

employer, Rio Hondo. The Petitioner alleged that Rio Hondo discriminated against her based upon her national origin (East Indian) when she failed to secure a full-time, tenured-track mathematics instructor position with the college.

The matter was ordered into non-binding court ordered arbitration under California Code of Civil Procedure, § 1141.10 on May 12, 1993. The arbitration in this matter was conducted on September 7, 1993. The arbitrator filed an arbitration award in favor of Rio Hondo and against the plaintiff on September 14, 1993.

In response, the Petitioner brought a motion to vacate the arbitration award and to tax costs against Rio Hondo. The hearing on Petitioner's motion was held

on October 13, 1993 at which time the Honorable Daniel S. Pratt denied Petitioner's motion ruling that Petitioner had failed to, "demonstrate either that the (1) arbitration was procured by corruption or fraud; or that, (2) her rights were prejudiced by any delay in scheduling the arbitration hearing." However, the Petition filed a timely request for trial de novo thereby annulling the arbitration award.

On October 19, 1992, the Petitioner then brought a Motion to Quash defendant's deposition subpoenas for the production of business records, for a protective order, and for an award of monetary sanctions against defendant. The motion was denied by the Honorable James E. Edson and the Petitioner was ordered to pay Rio Hondo the sum of

$750.00 in sanctions. Petitioner's subsequent motion for reconsideration was denied on January 8, 1993. (The Petitioner, on page 9 of her Petition for Writ of Certiorari incorrectly states that the denial of her motion for reconsideration was on January 8, 1994).

On May 26, 1993, Rio Hondo's Motion to Quash the Petitioner's deposition for production of business records and request for monetary sanctions was granted by Judge Daniel S. Pratt. Petitioner was instructed to pay Rio Hondo $750.00 within thirty days of the notice of ruling. The Petitioner, as yet, has failed to obey either sanction order and the total of $1,500.00 in sanctions remains outstanding.

On June 28, 1993, the Petitioner brought a motion for contempt proceedings

against the defendant and defense counsel. The Petitioner also sought to compel the defendant's attendance at a deposition to compel production of documents, and an award of monetary sanctions. On July 14, 1993, Judge Daniel S. Pratt denied the Petitioner's motions for contempt, to compel documents, and for sanctions.

On October 7, 1993, Rio Hondo brought a motion to dismiss the Petitioner's complaint on the grounds that the Petitioner wilfully and deliberately violated a court sanction order by refusing to pay the total of $1,500.00 to Rio Hondo pursuant to the court's orders of November 13, 1992 and May 22, 1993. The motion to dismiss, brought pursuant to California Code of Civil Procedure, § 583.150, was denied.

However, the action was stayed pending the Petitioner's compliance with the court's sanction orders.

Subsequently, on December 31, 1993, the Petitioner brought a Petition for Writ of Mandate and Prohibition before the Court of Appeal of the State of California, Second Appellate District. The Petitioner sought a preemptory Writ of Mandate and Prohibition commanding the Superior Court to do the following:

> *(1) Annul its order of October 13, 1993, and vacate the arbitration award entered against the Petitioner on September 14,, 1993; (2) Commanding respondent Superior Court to refrain from enforcing its orders of November 13, 1992 and January 8, 1993 denying Petitioner's Motion to Quash deposition subpoenas for production of*

*business records and for sanctions; (3) Command respondents Superior Court to refrain from enforcing its order of May 26, 1993 granting Rio Hondo's Motion to Quash and awarding sanctions in the amount of $750.00 in favor of Rio Hondo and against Petitioner; (4) Commanding respondent Superior Court to annul its order of July 14, 1993 denying Petitioner's Motion for Contempt, to compel depositions, and for sanctions; and commanding respondent Superior Court to vacate its order of October 25, 1993 staying this action pending the Petitioner's payment of sanctions.*

The Petition for Writ of Mandate and Prohibition was untimely in that the Petition was brought in violation of the sixty day rule, which requires that a

Petition seeking extraordinary relief be filed a soon as possible, but no later than sixty days after entry of the order from which review is sought absent a showing of extraordinary circumstances. Popelka, Allard, McCowan & Jones v. Superior Court, (1980) 107 Cal.App.3d 496, 499. Petitioner set forth no extraordinary circumstances or good cause to justify the late filing of her Petition. Id. at 499.

Nevertheless, the Petition was filed and summarily denied on January 6, 1994 by the Court of Appeal of the State of California, Second Appellate District. Thereafter, on January 18, 1994, Petitioner filed a Petition for Review before the Supreme Court of the State of California. On March 17, 1994, the Petitioner's Petition for Review was also

denied.

The Petitioner now brings the instant Petition for Writ of Certiorari to review the California Supreme Court and Court of Appeal's denial of her Petition for Review and Writ of Mandate, respectively.

**SUMMARY OF ARGUMENT:**

The instant Petition must be denied for the following reasons:

1. This court lacks jurisdiction over this matter pursuant to 28 U.S.C.A. § 1257(a) as no federal question has been decided by any of the lower courts in the state of California. The issues passed on by the Superior Court, Court of Appeal, and Supreme Court involved interpretations of state discovery law, contempt proceedings and arbitration conduct; no federal question was

implicated. In fact, the Petitioner refers to federal statutes and Constitutional issues for the first time in the instant Petition. The California courts in this case have never had the opportunity to consider federal questions, much less dispose of them in a way that is repugnant to the Constitution, treaties, or laws of the United States, conflicts with the decision of another state court of last resort or of United States Court of Appeals or implicates any title, right, or privilege, or immunity that is specially set up or claimed under the Constitution.

2. The California State Court decisions in question do not constitute final judgments or orders as required by 28 U.S.C. § 1257(a). Petitioner seeks

review of various interlocutory orders concerning court ordered arbitration proceedings, discovery matters, contempt rulings, and sanctions orders. None of these rulings represent a final judgment or decree.

3. The issues presented by Petitioner were not raised in a timely fashion before the appellate courts of the State of California and thus may not be raised before this court. The Petitioner failed to Petition the California Court of Appeal for a writ of mandate concerning the court rulings of November 13, 1992, January 8, 1993, May 26, 1993, July 14, 1993, October 13, 1993, and October 25, 1993 within sixty days after entry of the order from which review was sought, as required by state law.

4. Pursuant to Article III of the United States Constitution, this Court may only exercise its jurisdiction over an existing case or controversy. The Superior Court's denial of the Petitioner's motion to vacate the arbitration award was rendered moot when the Petitioner filed a request for trial de novo. Pursuant to the California Code of Civil Procedure, 1141.20 court ordered arbitrations are non-binding and may be nullified by the filing of a request for trial de novo. In this case, the Petitioner filed a timely request for trial de novo, thereby negating the arbitration award. Accordingly, no case or controversy exists with respect to this issue and the court may not exercise its jurisdiction.

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**REASONS FOR DENYING THE INSTANT PETITION:**

**I.**

**THE STATE COURT RULINGS THAT THE PETITIONER PRESENTS FOR REVIEW DO NOT INVOLVE ANY FEDERAL QUESTIONS.**

28 U.S.C.A. § 1257(a), the federal statute which permits this Court to review state court decisions, provides that:

> "*Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn*

*in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."*

The considerations governing review on Writ of Certiorari have been expressed in Rule 10.1(b) and (c) of the Rules of the Supreme Court of the United States as follows:

*"A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only when there are special and important reasons therefor. The following, while*

*neither controlling or fully measuring the Court's discretion, indicate the character of reasons that will be considered:...(b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals. (c) When a state court or United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court."*

The principle purpose for which United States Supreme Court uses certiorari jurisdiction is to resolve conflicts among circuit courts of appeals

and state courts concerning the meaning of provisions of federal law. Braxton v. U.S., 500 U.S. 344,347, 111 S.Ct. 1854, 114 L.Ed. 2d 385 (1991). Only final judgments bearing upon important issues of federal law provide the basis for the appellate jurisdiction of the United States Supreme Court with respect to state court cases. New York Times Co. v. Jascalevich, M.J., 439 U.S. 1317, 1318, 99 S.Ct.6, 8, 58 L.Ed. 2d 25, reapplication denied, 439 U.S. 1331, 99 S.Ct.11, 58 L.Ed. 2d 38 (1978).

Therefore, the critical issue in this Court's determination of the instant Petition for Writ of Certiorari is the presence in the record of an important federal question which has been decided by the California Supreme Court.

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Petitioner erroneously attempts to assert that the aforementioned state court rulings on discovery matters, contempt proceedings and arbitration conduct, decided solely under state law, somehow implicate important federal questions that conflict with the decision of another state court of last resort, United States Court of Appeals, and/or the United States Supreme Court.

However, no federal question has been decided by any of the state courts in this case. Indeed, at no time prior to the instant Petition for Writ of Certiorari, did Petitioner contend that any federal statute or federal constitutional question was at issue. The issues litigated before the California Superior Court, Court of Appeal and Supreme Court, arose purely

from California state law, with no connection with any important federal question.

Furthermore, the Petitioner advances no cogent argument to suggest that the rulings made by the various California state courts conflict with any other state court of last resort, United States Court of Appeals, or this Court. In fact, the Petitioner advances no actual argument at all. She merely recites the holding of a number of cases decided by this Court and several United States Courts of Appeal without interpretation or analysis. The instant Petition is meritless, incomprehensible and should be disregarded in its entirety.

Finally, the Petitioner has failed to set forth in her Statement of the Case any reference as to when and in what

manner federal questions were presented and/or passed upon in the California Superior Court, Court of Appeal, and Supreme Court as required by U.S. Sup.Ct Rule 14.1(h), 28 U.S.C.A.:

> *"If review of a judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings, both in the court of first instance and in the appellate courts, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by those courts; and such pertinent quotation of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears*

*(e.g., ruling on exception, portion of court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on a writ of certiorari...."*

Because no federal question was raised at any time prior to the instant Petition, plaintiff did not and could not set forth such facts in her statement of the case. Therefore, because no federal question is presented by the Petitioner, this Court has no jurisdiction to grant the instant Petition.

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## II.

## THE CALIFORNIA SUPERIOR COURT'S RULINGS ARE NOT FINAL JUDGMENTS OR ORDERS AND MAY NOT BE REVIEWED BY THIS COURT.

Consistent with 28 U.S.C.A. § 1257, this Court's jurisdiction to review a state court decision is generally limited to a final judgment rendered by the highest court of the state in which decisions may be had. Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 476-477, 95 S.Ct. 1029, 1036, 43 L.Ed. 2d 328 (1975). In general, the final judgment rule has been interpreted, "to preclude reviewability...where anything further remains to be determined by a State

court, no matter how dissociated from the only federal issue that has finally been adjudicated by the highest court of the State." Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 124, 65 S.Ct. 1475, 1478, 89 L.Ed. 2092 (1945); Flynt v. Ohio, 451 U.S. 619, 620, 101 S.Ct. 1958, 1959, 68 L.Ed.2d 489 (1981).

An important purpose of the requirement that the United States Supreme Court review only final judgments of a states highest available court is to prevent its interference with state proceedings when the underlying dispute may otherwise be resolved. Costarelli v. Massachussets, 421 U.S. 193, 197, 95 S.Ct. 1534, 1536, 44 L.Ed.2d 76 (1975).

In North Dakota St. Bd. of Pharm. v. Snyder's Drug Stores, Inc., 414 U.S. 156, 159, 94 S.Ct.407, 410, 38 L.Ed.2d 379

(1973). This Court held that:

> *"The finality requirement of 28 U.S.C. § 1257, which limits our review of state court judgments, serves several ends: (1) it avoids piecemeal review of state court decisions; (2) it avoids giving advisory opinions in cases where there may be no real 'case' or 'controversy' in the sense of Art. III; (3) it limits review of state court determinations of federal constitutional issues to leave at a minimum federal intrusion in state affairs."*

In the instant Petition, Petitioner seeks review of interlocutory discovery, non-binding arbitration and sanction rulings rendered by the Superior Court. Because none of these orders represent final judgments, this Court has no jurisdiction to grant review of the

instant Petition.

It must be noted that this Court has held that a state Supreme Court's final disposition of a Writ of Prohibition is considered a final judgment for purposes of 28 U.S.C.A. § 1257(a). Madruga v. Superior Court of California, in and for the County of San Diego, 346 U.S. 556, 557, 74 S.Ct.298, 299, 98 L.Ed.290 (1954). Therefore, it would seem that the Court of Appeal's denial of the Petitioner's Writ of Prohibition may constitute a reviewable final judgment.

However, in this case, unlike Madruga, the California Supreme Court declined to review the Court of Appeal's denial of the Petitioner's Petition for Writ of Mandate and Writ of Prohibition and made no substantive disposition of any issue presented therein.

Additionally, as set forth more fully below Section III of Petitioner's Writ of Mandate and Prohibition was not timely filed and thus not properly presented before either the Court of Appeal or the Supreme Court of the State of California. Under these circumstances, Rio Hondo asserts that no final judgment or decree is presented in the instant Petition.

Finally, while an order holding an individual in civil contempt may be reviewed as a final judgment, (See New York Times Co. v. Jascalevich, 439 U.S. 1317, 1319, 99 S.Ct.8, 58 L.Ed.25 (1978)), the California Superior Court's denial of the Petitioner's Motion for Contempt does not constitute a judgment in any sense and may not be reviewed by this court.

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## III.

## THE ISSUES PRESENTED BY PETITIONER WERE NOT TIMELY RAISED IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA.

A Petitioner's failure to use proper channels of review is a sufficient basis to deny a Petition for Writ of Certiorari. Hammerstein v. Superior Court of Cal., (1951), 341 U.S. 491, 492, 71 S.Ct. 820, 821, 95 L.Ed. 1135, rehearing denied, 342 U.S. 843, 72 S.Ct. 21, 96 L.Ed. 637 (1951).

The Petitioner failed to timely raise any of the issues presented in her Petition for Writ of Certiorari before the Court of Appeal of the State of California, Second Appellate District.

Specifically, Petitioner filed her Petition for Writ of Mandate on January 3, 1994. The Superior Court rulings that were the subject of her Petition for Writ of Mandate and Prohibition occurred on November 13, 1992, January 8, 1993, May 26, 1993, July 14, 1993, October 13, 1993, and October 25, 1993. Each ruling was beyond the mandatory sixty day rule, which requires that a Petition seeking extraordinary relief be filed no later than sixty days after entry of the order from which review is sought. Popelka, 107 Cal.App.3d at 499. Accordingly, the instant Petition must be denied.

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## IV.

## THE CALIFORNIA SUPERIOR COURT'S DENIAL OF THE PETITIONER'S "MOTION TO VACATE THE ARBITRATION" WAS RENDERED MOOT WHEN THE PETITIONER WAS GRANTED A TRIAL DE NOVO.

This court lacks jurisdiction to review moot cases pursuant to the requirements of Article III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy. Liner v. Jafco, Inc., 375 U.S. 301, 306 fn.3, 84 S.Ct.391, 394, fn.3, 111 L.Ed.2d 347 (1964). In its determination of

mootness, this court must consider whether its decision on the merits, "cannot affect the rights of the litigants in the case before it." St. Pierre v. United States, 319 U.S. 41, 42, 63 S.Ct. 910, 911, 87 L.Ed.1199 (1943).

The Petitioner, by filing her request for trial de novo has rendered the issue of the Superior Court's order denying Petitioner's Motion to Vacate the arbitration moot. Pursuant to California Code of Civil Procedure, § 1141.20 and California Rules of Court, Rule 1616(c), the filing of a request for trial de novo will cause the case to be tried as though no arbitration proceedings had occurred.

The Petitioner's filing of a request for trial de novo has effectively vacated the arbitration award. Therefore the Superior court's ruling on Petitioner's

Motion to Vacate the Arbitration Award has no present effect and therefore this Court's review could not affect the rights of the litigants in this action. Accordingly, this Court lacks jurisdiction to review the Superior Court's denial of the Petitioner's Motion to Vacate the Arbitration Award as the issue has been rendered moot.

**CONCLUSION:**

Based on the foregoing, respondent respectfully requests that the instant Petition for Writ of Certiorari be denied.

DATED: August 22, 1994

Respectfully submitted,

BY: _____

NORMAN J. WATKINS
LYNBERG & WATKINS
Attorneys for Real Party in Interest
RIO HONDO COMMUNITY COLLEGE DISTRICT

Srinivasan v. Rio Hondo C.C.D.

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of eighteen and not a party to the within action; my business is 2020 East First Street, Suite 101, Santa Ana, California 92705-4015.

On **August 22, 1994** I served the foregoing document described as **BRIEF IN OPPOSITION** on the interested parties in this action

____ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

__XX__ by placing __XX__ the original __XX__ and true copies thereof enclosed in sealed envelopes addressed as follows:

**SEE ATTACHED SERVICE LIST.**

__XX__ BY MAIL: I deposited such envelope in the mail at Santa Ana, California.

____ BY FACSIMILE TRANSMISSION: The facsimile machine I used complied with California Rules of Court

2003(3) and no error was reported by the machine. Pursuant to rule 2005(i), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this proof of service. (909) 824-3332 **(TO CALIFORNIA SUPREME COURT ONLY)**

____ BY PERSONAL SERVICE I delivered such envelope by hand to the offices of the addressee.

__XX__ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **August 22, 1994** at Santa Ana, California.

Laura A. Lippeatt

Laura A. Lippeatt